

Internal Revenue Service

Department of the Treasury

District
Director

P.O. Box 2508, Cincinnati, OH 45201

Person to Contact
[REDACTED]Telephone Number
[REDACTED]

Refer Reply to

RP/EO

Date

SEP 28 1985

Dear Sir or Madam:

By our letter dated August 21, 1985, we proposed to deny your application for recognition of exemption under section 501(c)(4) of the Internal Revenue Code of 1954. This proposal was based on our determination that you are operated similarly to the condominium association described in Rev. Rul. 74-17, and that you fail to meet the criteria listed in Revenue Ruling 74-99.

You have agreed to this proposal by signing Form 6018, Consent to Proposed Adverse Action. Accordingly, this letter becomes our final determination.

Since you are not exempt, you must file all Federal tax returns required of you by the Internal Revenue Code.

This is a denial letter.

Sincerely yours,

[REDACTED]
[REDACTED]
District Director

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Summary	[REDACTED]						
Date	9-23-85						

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Telephone Number:

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EP/EO

Date

AUG 2 1 1985

Dear Sir or Madam:

- We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1954 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.


If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892 (Rev. 7-83), "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by

someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,


District Director

Enclosures: 3

ENCLOSURE I

██

You were incorporated on ██████████ under the ██████████ Not-For-Profit Corporation Act ██████████ for the purposes of providing "(1) for the maintenance of utility easements and lawns, (2) for snow removal from certain dedicated public streets and (3) for the performance of such other functions as may be designated to it by the Declarant." The Declarant is ██████████ ██████████, the developer of ██████████.

The powers of the corporation include the collection of any charges, dues, assessments or membership fees made against members; the acquisition, ownership, operation, maintenance, transferring or disposing of real or personal property in connection with the affairs of the Corporation; and exercising any and all powers, rights and privileges of a non-profit corporation may have or exercise.

There are two classes of members. Class A members represent all owners except Class B, and are entitled to one vote per dwelling unit owned. Class B members consist of the Declarant and is entitled to three votes for each dwelling unit owned until such time the total outstanding votes of Class A equals the total outstanding votes of Class B or until July 1, 1987.

Your application indicates that you will mow and maintain small common areas, pay for snow removal, pool maintenance and utilities. Also, it will approve plans for condominium additions, fences, etc. The Association enforces covenants with regard to the appearance of the members' units and maintains the exterior walls and roofs. The exterior of the units is association property.

Section 501(c)(4) of the Code provides in part, that "civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare" qualify for recognition of exemption.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides in part, that:

... an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements

Revenue Ruling 74-99, 1974-1 C.B. 131 lists the three criteria a homeowners association must meet in order to qualify for exemption under section 501(c)(4) of the Code. The homeowners association:

1. must not conduct activities directed to the exterior maintenance of private residences;
2. it must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental; and
3. the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

Revenue Ruling 74-99 1974-1 C.B. 131 holds that where an organization's stated purposes are to administer and enforce covenants for preserving the architecture and appearance of a given real estate development, and to own and maintain common green areas, a prima facie presumption exists that the organization is primarily formed and operated for the individual business or personal benefit of its members and as such does not qualify for exemption under section 501(c)(4) of the Code.

In your application, you indicated the Association enforces covenants with regard to the appearance of members' units and maintains the exterior walls and roofs of the condominium units. The presumption here is that your organization is operated for the personal benefit of your members who are the owners of the condominiums.

This Revenue Ruling further points out the word "community" within the meaning of section 501(c)(4) has traditionally been construed as having reference to a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision, unit or district thereof.

From the information supplied, [REDACTED] is not a community within the meaning of Revenue Ruling 74-99. It is a development of condominium units.

Revenue Ruling 74-17, 1974-1 C.B. 130 states that where an organization was formed by the unit owners of a condominium housing project to provide for the management, maintenance and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code.

As your organization is operated similarly to the condominium association described in Rev. Rul. 74-17, and fails to meet the criteria listed in Revenue Ruling 74-99, we hereby propose to deny your application for recognition of exemption under section 501(c)(4) of the Code.

However, it is our opinion that your organization is the type described in section 528 and you may elect to file under section 528 to receive certain tax benefits which, in effect, permits the exclusion of exempt function income. The election by a homeowners association to file under section 528 is to be made by filing Form 1120-H, U.S. Income Tax Return for Homeowners Associations.